

1 KAMALA D. HARRIS
Attorney General of California
2 MARC GREENBAUM
Supervising Deputy Attorney General
3 CHRISTINA THOMAS
Deputy Attorney General
4 State Bar No. 171168
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2520
6 Facsimile: (213) 897-2804

7 *Attorneys for Complainant*

8 **BEFORE THE**
9 **BOARD OF PHARMACY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

13 **JOSEPH ELIJAH MADRID**
3969 Severance Ave.
San Bernardino, CA 92405

14 Pharmacy Technician Registration
15 No. TCH 78849

16 Respondent.

Case No. 5116

A C C U S A T I O N

17 Complainant alleges:

18 **PARTIES**

19 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
20 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

21 2. On or about October 29, 2007, the Board of Pharmacy issued Pharmacy Technician
22 Registration Number TCH 78849 to Joseph Elijah Madrid (Respondent). The Pharmacy
23 Technician Registration was in full force and effect at all times relevant to the charges brought
24 herein and will expire on February 28, 2017, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board under the authority of the following
27 laws. All section references are to the Business and Professions Code unless otherwise indicated.

28 ///

STATUTORY PROVISIONS

1
2 4. Section 490 states, in pertinent part:

3 "(a) In addition to any other action that a board is permitted to take against a licensee, a
4 board may suspend or revoke a license on the ground that the licensee has been convicted of a
5 crime, if the crime is substantially related to the qualifications, functions, or duties of the business
6 or profession for which the license was issued."

7 "(b) Notwithstanding any other provision of law, a board may exercise any authority to
8 discipline a licensee for conviction of a crime that is independent of the authority granted under
9 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
10 of the business or profession for which the licensee's license was issued."

11 "(c) A conviction within the meaning of this section means a plea or verdict of guilty or a
12 conviction following a plea of nolo contendere. Any action that a board is permitted to take
13 following the establishment of a conviction may be taken when the time for appeal has elapsed, or
14 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
15 made suspending the imposition of sentence, irrespective of a subsequent order under the
16 provisions of Section 1203.4 of the Penal Code."

17 5. Section 493 states:

18 "Notwithstanding any other provision of law, in a proceeding conducted by a board within
19 the department pursuant to law to deny an application for a license or to suspend or revoke a
20 license or otherwise take disciplinary action against a person who holds a license, upon the
21 ground that the applicant or the licensee has been convicted of a crime substantially related to the
22 qualifications, functions, and duties of the licensee in question, the record of conviction of the
23 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,
24 and the board may inquire into the circumstances surrounding the commission of the crime in
25 order to fix the degree of discipline or to determine if the conviction is substantially related to the
26 qualifications, functions, and duties of the licensee in question. As used in this section, "license"
27 includes "certificate," "permit," "authority," and "registration."

28 ///

1 6. Section 4059, subdivision (a) states, in pertinent part:

2 “A person may not furnish any dangerous drug, except upon the prescription of a physician,
3 dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section
4 3640.7. A person may not furnish any dangerous device, except upon the prescription of a
5 physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to
6 Section 3640.7.”

7 7. Section 4060 provides in pertinent part, that no person shall possess any controlled
8 substance, except that furnished to a person upon the prescription of a physician, dentist,
9 podiatrist, optometrist, veterinarian, or other authorized prescriber.

10 8. Section 4300 provides, in pertinent part, that every license issued by the Board is
11 subject to discipline, including suspension or revocation.

12 9. Section 4300.1 states:

13 “The expiration, cancellation, forfeiture, or suspension of a board-issued license by
14 operation of law or by order or decision of the board or a court of law, the placement of a license
15 on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board
16 of jurisdiction to commence or proceed with any investigation of, or action or disciplinary
17 proceeding against, the licensee or to render a decision suspending or revoking the license.”

18 10. Section 4301 states:

19 “The board shall take action against any holder of a license who is guilty of unprofessional
20 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.

21 Unprofessional conduct shall include, but is not limited to, any of the following:

22

23 “(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or
24 corruption, whether the act is committed in the course of relations as a licensee or otherwise, and
25 whether the act is a felony or misdemeanor or not.

26

27 “(h) The administering to oneself, of any controlled substance, or the use of any dangerous
28 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to

1 oneself, to a person holding a license under this chapter, or to any other person or to the public, or
2 to the extent that the use impairs the ability of the person to conduct with safety to the public the
3 practice authorized by the license.

4

5 "(i) Except as otherwise authorized by law, knowingly selling, furnishing, giving away, or
6 administering, or offering to sell, furnish, give away, or administer, any controlled substance to an
7 addict.

8

9 "(j) The violation of any of the statutes of this state, or any other state, or of the United
10 States regulating controlled substances and dangerous drugs.

11

12 "(l) The conviction of a crime substantially related to the qualifications, functions, and
13 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
14 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
15 substances or of a violation of the statutes of this state regulating controlled substances or
16 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
17 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
18 The board may inquire into the circumstances surrounding the commission of the crime, in order
19 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
20 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
21 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
22 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
23 of this provision. The board may take action when the time for appeal has elapsed, or the
24 judgment of conviction has been affirmed on appeal or when an order granting probation is made
25 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
26 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
27 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
28 indictment."

1 **REGULATORY PROVISIONS**

2 11. California Code of Regulations, title 16, section 1770 states, in pertinent part:

3 "For the purpose of denial, suspension, or revocation of a personal or facility license
4 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
5 crime or act shall be considered substantially related to the qualifications, functions or duties of a
6 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
7 licensee or registrant to perform the functions authorized by his license or registration in a manner
8 consistent with the public health, safety, or welfare."

9 **COST RECOVERY**

10 12. Section 125.3 states, in pertinent part, that the Board may request the administrative
11 law judge to direct a licentiate found to have committed a violation or violations of the licensing
12 act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the
13 case.

14 13. **CONTROLLED SUBSTANCE**

15 "Vicodin ES," is the brand name for Hydrocodone/Acetaminophen. It is a Schedule III
16 controlled substance as designated by Health and Safety Code section 11056, subdivision (e)(7)
17 and is categorized as a dangerous drug pursuant to section 4022.

18 **FIRST CAUSE FOR DISCIPLINE**

19 **(Conviction of a Substantially Related Crime)**

20 14. Respondent is subject to disciplinary action under sections 4301, subdivision (l) and
21 490, in conjunction with California Code of Regulations, title 16, section 1770, in that
22 Respondent has been convicted of a crime substantially related to the qualifications, functions or
23 duties of a pharmacy technician. On or about November 5, 2013, after pleading guilty,
24 Respondent was convicted of one misdemeanor count of violating Penal Code section 484,
25 subdivision (a) [theft of personal property] and one misdemeanor count of Health and Safety
26 Code section 11377, subdivision (a) [possession of a controlled substance] in the criminal
27 proceeding entitled *The People of the State of California v. Joseph Elijah Madrid* (Super. Ct. San
28 Bernardino County, 2013, No. FSB1303689). The Court sentenced Respondent to serve 2 days in

1 San Bernardino County Jail and placed him on 36 months probation, with terms and conditions.
2 The circumstances surrounding the conviction are that at the time of the misconduct for which he
3 was convicted, Respondent had been employed as a pharmacy technician at CVS Pharmacy
4 (CVS), in Grand Terrace, CA for approximately 6 years. On or about June 1, 2013, CVS security
5 personnel reviewing surveillance camera videos from that day, observed Respondent concealing 1
6 bottle of Hydrocodone/APAP 10-325 with approximately 100 pills. Respondent subsequently
7 admitted to stealing an additional bottle of Hydrocodone/APAP 10-325 with approximately 100
8 pills from CVS over the last couple of weeks to feed his addiction. Respondent further admitted
9 that he was taking Hydrocodone given to his wife from a dentist and began to steal Hydrocodone
10 from his parents. Respondent was subsequently arrested for violating Penal Code section 459,
11 subdivision (c) [commercial burglary], Penal Code section 496, subdivision (a) [receiving known
12 stolen property], and Health and Safety Code section 11350, subdivision (a) [possession of a
13 controlled substance].

14 **SECOND CAUSE FOR DISCIPLINE**

15 **(Obtained or Possessed a Controlled Substance)**

16 15. Respondent is subject to disciplinary action under section 4301, subdivision (j), as
17 defined in section 4060, in that on or about June 1, 2013, while working as a pharmacy technician
18 at CVS, Respondent, by his own admission, stole controlled substances from his employer to feed
19 his addiction. Complainant refers to, and by this reference incorporates, the allegations set forth
20 above in paragraph 14, as though set forth fully.

21 **THIRD CAUSE FOR DISCIPLINE**

22 **(Furnishing Controlled Substances Without a Prescription)**

23 16. Respondent is subject to disciplinary action under section 4301, subdivisions (h) and
24 (i), as defined in section 4059, subdivision (a), in that on or about June 1, 2013, while working as
25 a pharmacy technician at CVS, Respondent, by his own admission, stole controlled substances
26 from his employer, to feed his addiction. Complainant refers to, and by this reference
27 incorporates, the allegations set forth above in paragraph 14, as though set forth fully.

28 ///

1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Dishonest Acts)**

3 17. Respondent is subject to disciplinary action under section 4301, subdivision (f), in
4 that on or about June 1, 2013, while working as a pharmacy technician at CVS, Respondent, by
5 his own admission, stole controlled substances from his employer, which he furnished to himself
6 to feed his addiction. Complainant refers to, and by this reference incorporates, the allegations
7 set forth above in paragraph 14, as though set forth fully.

8 **PRAYER**

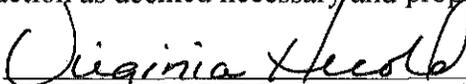
9 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
10 and that following the hearing, the Board of Pharmacy issue a decision:

11 1. Revoking or suspending Pharmacy Technician Registration No. TCH 78849, issued
12 to Joseph Elijah Madrid;

13 2. Ordering Joseph Elijah Madrid to pay the Board of Pharmacy the reasonable costs of
14 the investigation and enforcement of this case, pursuant to Business and Professions Code section
15 125.3; and

16 3. Taking such other and further action as deemed necessary and proper.

17 DATED: 9/15/15


18 VIRGINIA HEROLD
19 Executive Officer
20 Board of Pharmacy
21 Department of Consumer Affairs
22 State of California
23 Complainant

24
25 LA2014511257
26 61233390.doc
27 Jz(3/28/14-rev)
28